IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 1206 of 2001(A)

OPMV.2553/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT:

Madavan S/o. Appukuttan, Oravingal House, Pattiparambil P.O., Thiruvillamala (via), Thrissur.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS:
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1. K.C.Ramesh, S/o. Dharman, Karuthedath House, Chembukkavu, Thrissur.

2. Joshy Thomas, S/o. Thomas, Eruthipallil House, Kurumala P.O., Chelakkara, Trissur.

3. The Oriental Insurance Co. Ltd., represented by its Branch Manager, Branch No.2, K.P.M. Shopping Complex, Opp. Thiruvambadi Temple, Shoranur Road, Trissur-1.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA) FOR R3
SMT.A.VANI KESARI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & V. Giri, JJ.
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M.F.A.No.1206 of 2001
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Dated this the 22nd day of August, 2007.

JUDGMENT

Giri,J.

Claimant, who was injured in a motor vehicle accident, which took place on 14.8.1999, is the appellant herein. While the claimant was riding his Moped along the Alathur - Kavassery public road, an autorickshaw rashly driven by the second respondent knocked him down. He suffered the following injuries:

> "suffered Type-1 compound fracture to upper end of Tibia, Inter and outer Condylar fracture (L) upper Tibia and multiple injuries all over the body."

He was treated in the Medical College Hospital, Thrissur initially from 14.8.1999 till 24.9.1999. He was discharged on the said day after open reduction and bone grafting. Apparently, he was again admitted into the hospital on 14.10.1999. Apart from the open reduction and bone grafting, external fixator was applied

under spinal anesthesia. Hospitalisation extended upto 27.11.1999. His visits to the hospital continued even thereafter. Appellant claimed a total amount of Rs.1,50,000/- as compensation for the injuries sustained by him. The Tribunal awarded a total compensation of Rs.48.750/- with interest at the rate of 9% from the date of petition, to be paid by the third respondent - Insurance Company.

2. The Tribunal had found that the accident took place primarily on account of the negligence on the part of the second respondent. The Tribunal also found that there is contributory negligence on the part of the claimant, which was assessed at 25%. Aggrieved by the award of the Tribunal in so far as it relates to the quantum as also the finding of contributory negligence, the claimant has preferred this appeal.

3. We heard counsel on both sides and have perused the records. In so far as the finding of the Tribunal as regards the contributory negligence on the part of the claimant, we are of the view that the said finding does not warrant any interference. The Tribunal had referred to Ext.A2 A.M.V.I. report pertaining to the Moped driven by the claimant and Ext.A3, which is another report

of the A.M.V.I. pertaining to the autorickshaw involved in the accident. The Tribunal correctly took note of the fact that the front portion of the Moped and the rear portion of the autorickshaw were seen to be damaged, that this indicates negligence on the part of the driver of the Moped as well, in not maintaining an adequate distance between Moped and the vehicle, which was in front of the same. At the same time, the autorickshaw driver was negligent in as much as he had stopped the vehicle abruptly, without even showing any signal. The final charge sheet was laid by the police against the driver of the autorickshaw. The conclusion regarding negligence on the part of the drivers of both the vehicles, arrived at by the Tribunal does not warrant any interference.

4. The claimant then questions the quantum of compensation. The claimant was a headload worker, aged 48 at the time of the accident. As noted above, his injuries involved type-1 compound fracture to the upper end of Tibia. Apparently open reduction and bone grafting were done. A certificate of disability, Ext.A14, issued by the Orthopedic Surgeon indicates a permanent disability of 30%. The Tribunal declined to accept the

said certificate on the premise that it was not properly proved. This conclusion does not seen to be correct. The marking of the certificate was not objected to by the respondents nor did the respondents take up a contention that the certificate was improperly procured. The Tribunal had seen the claimant at the stage of trial and noted that there is a bent below the knee. The Tribunal ought to have accepted Ext.A14 certificate indicating a permanent disability of 30%, suffered by the claimant. We do so.

5. Having declined to accept the disability certificate the Tribunal proceeded to assess the quantum of compensation for loss of earning power on a rough and ready estimate at Rs.25,000/-. We find that there is no scientific basis for the same. The claimant was admittedly a headload worker at the time of the accident. Assuming that he would secure work for 25 days in a month and adopting a very conservative figure of Rs.100/- per day, his monthly income, at the time of the accident would have been Rs.2,500/-. The claimant was aged 48. Therefore, the multiplier to be adopted is 13 and calculating the compensation adopting the multiplier method, the claimant then would become entitled to an amount of Rs.1,17,000/- (2500 x 12

x 13 x 30/100). The Tribunal had awarded an amount of Rs.25,000/- towards compensation for loss of earning power and another amount of Rs.12,000/- towards loss of amenities. The said amount of Rs.37,000/- is to be deducted from the amount of Rs.1,17,000/-, which is assessed as the compensation for loss of earning power. The Tribunal had noted that the claimant would have suffered loss of earnings for a period of at least six months. The Tribunal had awarded an amount of Rs.9,000/- by way of compensation for the same. Since we have adopted Rs.2,500/- as the monthly income of the claimant, he is entitled to an additional compensation of Rs.6,000/- under the said head.

6. Though the learned counsel for the claimant contended that the compensation awarded under other heads are also low, we are satisfied that the quantum of compensation under the other heads are just and reasonable and therefore does not warrant any enhancement.

7. Thus, we find that the compensation for loss of earning power and the actual loss of earnings for a period of six months is liable to be enhanced by an amount of Rs.80,000/- + Rs.6,000/- aggregating Rs.86,000/-. Since we affirm the findings

of the Tribunal as regards the contributory negligence of the claimant, the claimant would be entitled to an additional compensation of Rs.64,500/-.

8. In the result, the appeal is allowed and the claimant is found entitled to an amount of Rs.64,500/- as compensation over and above the amount awarded by the court below. Third respondent shall deposit the said amount of Rs.64,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Since the accident took place 8 years ago, the appellant - claimant will be entitled to withdraw the same on deposit. Appeal is disposed of on the above terms, but there will be no order as to costs.

J.B.Koshy,
Judge.

V.Giri,
Judge.

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